

REMARKS

Withdrawal of the Election/Restriction Requirement is respectfully requested in view of the following argument. Claims 1-55 are pending in this application.

Summary of the Election/Restriction Requirement

In the Office Action, the Examiner has required an election under 35 U.S.C. §121 of one of the following species of claims:

Species 1: Figures 1 to 4C;

Species 2: Figures 5A to 5C;

Species 3: Figures 6A to 6C;

Species 4: Figures 7A to 7B;

Species 5: Figures 8A to 8B.

With regard to this, the Examiner has indicated that “[t]he species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.”

Provisional Election

Applicants hereby provisionally elect Species 1, which is drawn to Figures 1 to 4C and

read on 1-10, 18-35, 42, 43, 45-48, and 52-55. Applicant makes this election with traverse.

Traversal

Applicants respectfully traverse the Election/Restriction Requirement as follows:

Applicants respectfully assert that all claims directed to Species 1 through 5 should be examined together because such examination would not present a “serious burden” under MPEP §803. In accordance with MPEP §808, this requirement must have two aspects: “(A) the reasons (as distinguished from the mere statement of conclusion) why each invention *as claimed* is either independent or distinct from the other(s); and (B) the reasons why there would be a serious burden on the examiner if restriction is not required, i.e., the reasons for insisting upon restriction therebetween as set forth in the following sections.” Applicants respectfully assert that the Examiner fails to establish these two aspects which are required to provide in the Office Action.

With regard to aspect (A) above, the Examiner declares that “[t]he species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record” (Office Action, page 2, 2nd paragraph). However, this declaration obviously lacks reasoning that would support the independency or distinctiveness between Species 1-5. *See* MPEP §808.01, “[t]he particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.”

With regard to aspect (B) above, the Examiner declares that “[t]here is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph” (Office Action, page 2, 4th paragraph). However, this is merely a general statement which does not provide any substantial reasoning supporting the serious burden on the examiner.

The Examiner can show a “serious burden” by establishing one of: (1) the inventions are classified separately; (2) the inventions have been classified together, but it can be shown that each subject has formed a separate subject *for inventive effort* (can cite patents or show a separate field of search); or (3) the inventions require a separate field of search, that is, it is necessary to search for one subject in a place where no pertinent art for the other subject exists (MPEP §808.02). In the Office Action, however, the Examiner fails to set forth any of (1)-(3) above.

Therefore, because the Examiner fails to provide proper reasoning not only as to why each claimed subject matter is either “independent or distinct” from the other but also as to there is a “serious burden” in examining all the claims concerning to Species 1-5, Applicants respectfully submit that the outstanding Election/Restriction Requirement is not proper.

Furthermore, Applicants have paid a filing fee for an examination of all the claims in this application. If the Examiner refuses to examine the claims paid for when filing this application and persists in requiring Applicants to file divisional applications for each of the

groups of claims, the Examiner would essentially be forcing applicants to pay duplicative fees for the non-elected or withdrawn claims, inasmuch as the original filing fees for the claims (which would be later prosecuted in divisional applications) are not refundable.

Accordingly, Applicants respectfully request that the restriction requirement be withdrawn.

CONCLUSION

Applicants believe that a full and complete response has been made to the pending Office Action and respectfully submits that all of the stated reasons for the Election/Restriction Requirement have been overcome or rendered moot. Accordingly, Applicants respectfully request that the Restriction Requirement be withdrawn.

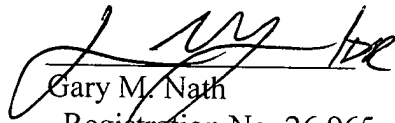
Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicants' undersigned representative at the number below to expedite prosecution.

Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted,
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